

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1771 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

LILIBEN CHITHERBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/11/1999

ORAL JUDGEMENT

#. District Magistrate, Bhavnagar, by order dated 24th February, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('PASA Act' for short) detained the petitioner under the provisions of the PASA Act.

#. The grounds of detention indicate that four offences were registered against the petitioner under the

Bombay Prohibition Act. The detaining authority took into consideration statements of three witnesses regarding unregistered offences. The authority, thereafter, recorded a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act for claiming privilege. The detaining authority considered resorting to less drastic remedies under Prohibition Act, etc. for preventing the petitioner from pursuing her illegal and anti-social activities, but recorded a satisfaction that resorting to those remedies may not possibilise immediate prevention of the petitioner from pursuing her illegal activities. The detaining authority, therefore, deemed it proper to resort to detention under PASA Act as the only remedy for immediately preventing the petitioner from pursuing her illegal activities.

#. The petitioner has challenged the order of detention on various counts. One of the grounds is that the representation made by the detenu on 9.3.1999 was not considered without delay and, therefore, the detention of the petitioner is bad in law.

#. Ms. Pahwa appearing for the petitioner submitted that the detention was made on 24th February, 1999. The detenu made a representation on 9th March, 1999, which was received by the detaining authority on 11th March, 1999. It is for the respondent to show cause that the representation was considered without delay. If the respondents are not able to show that it was decided at the earliest and without delay, the detention would be rendered illegal and bad in the eyes of law and, therefore, may be set aside.

#. Mr. Joshi, learned Assistant Government Pleader appearing for the respondent authorities submitted, after verifying it from the file made available to him by an official from the department that the representation dated 9.3.1999 was received by the detaining authority on 11th March, 1999. The same was rejected by the detaining authority and simultaneously forwarded to the Government on 17th March, 1999. Mr. Joshi states after verifying the file that the detention was approved by the Government on 6th March, 1999.

#. Keeping in light the above factual developments, it is amply clear that the detaining authority did not act from 11th March, 1999 to 17th March, 1999. The authority was, therefore, not sensitive to the fact that the detenu is under detention and the personal liberty of her was at stake. Therefore, there is a delay of about 5

days in taking any action on part of the detaining authority.

#. The detaining authority has also rejected the representation on 17th March, 1999, which it could not have done since the detention was approved by the State Government on 6th March, 1999 and it was expected of the detaining authority only to forward the representation at the earliest without delay. In this regard, if the affidavit is seen, in paragraph 8 of the affidavit, it is stated that the representation of the detenu dated 9th March, 1999 was considered and rejected on 17th March, 1999 and the detenu was informed accordingly. No attempt is made to explain why no action was taken during 11th March, 1999 to 17th March, 1999 either in the nature of forwarding the representation or in the nature of deciding the same (which of course could not have been done by the detaining authority - Navalkishor Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496). In view of this non-explanation of delay, the detention order would stand vitiated. In this regard, decision in the case of Urmilaben Navnitlal Gandhi v. State of Gujarat, 1994(2) GLH (UJ) 10 may be considered. There delay of five days, i.e. from 16th October to 21st October, 1993, in forwarding the representation was not explained and a Division Bench considered it a sufficient ground to hold that the detention was vitiated. Likewise, in a similar case in Special Civil Application No.3275 of 1998, decided on 5th August, 1998 (Vinodchandra Natwarlal Shah v. State of Gujarat), delay in forwarding the representation by the detaining authority by six days was considered sufficient to render the detention bad in law.

#. In view of the above discussion, the detention order deserves to be quashed and set aside by allowing the petition.

#. The petition is, therefore, allowed. The order of detention dated 24th February, 1999, passed by the detaining authority in respect of the petitioner-Liliben Chitherbhai Koli is hereby quashed and set aside. The petitioner-detenu is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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